

ESTTA Tracking number: **ESTTA269935**

Filing date: **03/04/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|--|
| Proceeding | 91183352 |
| Party | Plaintiff The Coca-Cola Company |
| Correspondence Address | James Johnson Sutherland Asbill & Brennen LLP 999 Peachtree St., NE Atlanta, GA 30309 UNITED STATES James.Johnson@sablaw.com, david.weslow@sutherland.com,pguibault@na.ko.com,jodenton@na.ko.com |
| Submission | Motion to Compel Discovery |
| Filer's Name | James H. Johnson |
| Filer's e-mail | james.johnson@sutherland.com, jason.prine@sutherland.com, greg.dillard@sutherland.com |
| Signature | /James H. Johnson/ |
| Date | 03/04/2009 |
| Attachments | Motion to Compel Discovery.pdf (7 pages)(173478 bytes) Declaration of James Johnson in Support of Motion to Compel.pdf (57 pages)(1151120 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE COCA-COLA COMPANY,

Opposer,

v.

ROLA COLA, INC.,

Applicant.

Opposition No.: 91183352

App. No.: 76/657,209

Mark: ROLA COLA

App. No.: 76/657,207

Mark: ROLA COLA NATURAL...LY

**OPPOSER'S MOTION FOR AN ORDER COMPELLING DISCOVERY AND
ALTERNATIVE MOTION FOR AN ORDER SUSTAINING THE OPPOSITION**

THE COCA-COLA COMPANY ("Opposer") hereby respectfully requests that the Board issue an Order as follows:

(a) Directing ROLA COLA, INC. ("Applicant"), pursuant to Fed. R. Civ. P. 37(a) and Trademark Rule 2.120(e), to respond fully and without objection to Opposer's First Set of Interrogatories, dated December 11, 2008 ("Interrogatories") and Opposer's First Request for Production of Documents and Things dated December 11, 2008 ("Document Requests"), or alternatively,

(b) Sustaining the opposition and entering judgment in favor of Opposer and against Applicant as a sanction for Applicant's inexcusable failure to timely respond to, or even acknowledge receipt of, Opposer's Interrogatories and Document Requests (collectively the "First Discovery Requests").

I. BACKGROUND

Opposer has continuously used the world famous mark COCA-COLA and various formatives thereof (collectively the "COCA-COLA marks") throughout the United States and the

world in connection with the offering for sale and sale of its beverages and beverage syrups.

Opposer commenced use of the COCA-COLA marks in the United States long prior to Applicant's alleged date of first use and long prior to the filing date of the applications being opposed herein. See Notice of Opposition, a copy of which is annexed to the Declaration of James H. Johnson, dated March 4, 2009 (hereinafter "Johnson Decl."), as Exhibit A.

Opposer is the owner of United States Trademark Registrations Nos. 22406; 238145; 238146; and 1432152 for the mark COCA-COLA and various formatives thereof for beverages, soft drinks, nutrition and tonic beverages, and syrups and concentrates for the manufacture thereof. Opposer's COCA-COLA marks have been extensively and continuously used in commerce from at least as early as May, 1886. Id.

The applications opposed herein were filed on March 24, 2006. Id. The application for ROLA COLA claims a first use date of December, 1982, and was assigned Application Serial No. 76657209 by the U.S. Patent and Trademark Office. Id. The application for ROLA COLA NATURAL...LY was filed on an intent-to-use basis and was assigned Application Serial No. 76657207 by the U.S. Patent and Trademark Office. Id. Applicant seeks registration of its purported marks in International Class 32 for non-alcoholic carbonated beverages; non-alcoholic beverages derived from the kola nut; non-alcoholic beverages made from fruit juices. Id.

Opposer filed the Notice of Opposition on April 2, 2008 alleging false suggestion of connection under Section 2(a) of the Lanham Act, likelihood of confusion under Section 2(d) of the Lanham Act, and dilution under Section 43(c) of the Lanham Act. Johnson Decl., Exh. A.

On or about June 2, 2008, Applicant served its Answer to Notice of Opposition. Id., Exh.

B. On December 11, 2008, Opposer served its First Discovery Requests.¹ Id., Exhs. C, D, and E. Applicant's responses to the First Discovery Requests were due to be served on or before January 15, 2009. See Trademark Rules 2.120(a) and 2.119(c).

Applicant failed to respond to the First Discovery Requests by January 15, 2009. On January 30, 2009, Opposer's counsel sent an email to Applicant's counsel inquiring regarding the status of Applicant's responses to the First Discovery Requests and requesting information as to whether or when the responses would be produced. Johnson Decl., ¶ 7; Exh. F. Applicant's counsel did not respond to this correspondence. Id.

Opposer's counsel repeated the request for responses by email and letter dated February 6, 2009 to counsel for Applicant and asked counsel to advise, within seven (7) business days, when responses would be forthcoming and to produce the requested discovery responses no later than fourteen (14) business days. Id. at ¶ 8; Exh. G. Again, no response was provided.

On February 18, 2009, Opposer's counsel sent, by email, another request for responses to the First Discovery Requests. Counsel specifically advised Applicant that if Opposer's counsel did not receive a response by February 26, 2009, Opposer would seek an order compelling Applicant's compliance with its obligations to respond to the First Discovery Requests. Id., ¶ 9; Exh. H. However, to date, Opposer has received no response indicating that Applicant's responses to the First Discovery Requests will be forthcoming, notwithstanding Opposer's counsel's repeated good faith efforts to secure the responses voluntarily. Johnson Decl. ¶ 10.

¹ Opposer also served Requests for Admission on December 11, 2008. Pursuant to Fed. R. Civ. P. 36(a)(3), the information requested is deemed admitted due to Applicant's failure to timely respond. TBMP § 407.03(a).

II. ARGUMENT

A. Opposer is Entitled to an Order Directing Applicant to Respond, Without Objection, to Opposer's Interrogatories and Document Requests.

Fed. R. Civ. P. 37(a)(2)(B) and Trademark Rule 2.120(e) provide that a party may seek an Order compelling interrogatory responses and production of documents. Opposer's Document Requests and Interrogatories seek records and information relating to, inter alia, Applicant's alleged adoption and use of ROLA COLA and ROLA COLA NATURAL...LY, its knowledge of Opposer's marks, and other factors relating to the likelihood that registration of the ROLA COLA and ROLA COLA NATURAL...LY applications may create confusion in the marketplace as set forth in In re E.I. du Pont de Nemours & Co., 177 USPQ 563, 476 F.2d 1257 (CCPA 1973). Johnson Decl., Exh. C and D. In sum, the First Discovery Requests seek evidence which will establish that Applicant is not entitled to register either ROLA COLA or ROLA COLA NATURAL...LY.

Applicant has failed to respond to the Interrogatories and Document Requests within the time granted by applicable federal rules and trademark rules of practice, and counsel for Applicant has not responded to Opposer's repeated attempts to resolve this discovery dispute without intervention from the Board. In light of Applicant's failure to timely respond to the First Discovery Requests, Applicant should be deemed "to have forfeited the right to object to the requests on their merits." TBMP § 403.03; No Fear Inc. v. Rule, 54 USPQ2d 1551, 1554 (TTAB 2000).

Opposer respectfully requests that the Board enter an Order compelling Applicant to respond, without objection, to Opposer's Interrogatories and Document Requests.

B. Alternatively, Opposer Requests That the Board Sustain the Opposition.

The Board may sustain an opposition and enter judgment against a party as a sanction for failure to abide by discovery rules and orders. Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co., 55 USPQ2d 1848 (TTAB 2000); Unicut Corp. v. Unicut, Inc., 222 USPQ 341 (TTAB 1984); Trademark Rule 2.120(g)(2); and TBMP § 527.01. Applicant's failure to timely respond to the First Discovery Requests or to even acknowledge the receipt thereof demonstrates Applicant's willful disregard of the Board's Scheduling Order and Applicant's unwillingness to defend this Opposition in accordance with the Federal Rules of Civil Procedure and the Trademark Office Rules. See Giant Food, Inc. v. Standard Terry Mills, Inc., 231 USPQ 626, 634 (1986) (sustaining opposition as sanction for pattern of discovery abuses, including refusal to comply with discovery requests and orders).

By Applicant's failure to abide by the discovery rules and its repeated failure to respond to Opposer's inquiries concerning the status of Applicant's compliance with its discovery obligations, Applicant has implicitly stated that it will not respond to the First Discovery Requests. In such cases, the appropriate remedy is entry of judgment against Applicant and the issuance of an order sustaining the opposition. See MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG, 59 USPQ2d 1477, 1478-79 (TTAB 2001) (entering judgment against party as sanction for willful disregard of discovery rules, including failure to timely respond to repeated discovery requests).

Applicant has offered no explanation for its failure to respond to the First Discovery Requests or to Opposer's repeated inquiries regarding the status of Applicant's responses. The only explanation for this failure is Applicant's willful disregard for its discovery obligations under the Federal Rules of Civil Procedure and the Trademark Office Rules. Accordingly,

Opposer respectfully requests that the Board sanction Applicant by sustaining the opposition and entering judgment in favor of Opposer. Trademark Rule § 2.120(g)(2); TBMP § 527.01.

III. CONCLUSION

For the foregoing reasons and those set forth in the Johnson Declaration, Opposer respectfully requests that the Board issue an Order pursuant to Fed. R. Civ. P. 37(a)(2)(b) compelling Applicant to respond fully and without objection to Opposer's First Set of Interrogatories and Opposer's First Request for Production of Documents.

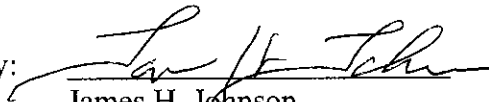
Alternatively, because Applicant through its conduct has impliedly stated that it will not respond to the First Discovery Requests, Opposer requests that the Board exercise its discretion to enter sanctions against Applicant in the form of an Order sustaining the opposition. Trademark Rule 2.120(g)(2); TBMP § 527.01(b).

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

Date: March 4, 2009

By:



James H. Johnson

Daniel J. Warren

David E. Weslow

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e-mail: james.johnson@sutherland.com

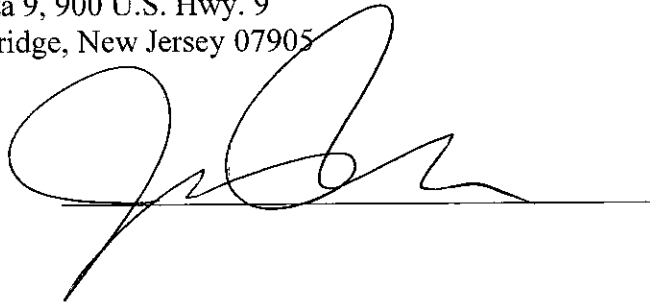
Attorneys for Opposer

THE COCA-COLA COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2009, a true and correct copy of the foregoing OPPOSER'S MOTION FOR AN ORDER COMPELLING DISCOVERY OR SUSTAINING THE OPPOSITION was served on counsel for Applicant by sending the same via first class mail, postage prepaid, in an envelope addressed as follows:

Ezra Sutton, Esq.
EZRA SUTTON, P.A.
Plaza 9, 900 U.S. Hwy. 9
Woodbridge, New Jersey 07905

A handwritten signature in black ink, appearing to read 'Ezra Sutton', is written over a horizontal line.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE COCA-COLA COMPANY,

Opposer,

v.

ROLA COLA, INC.,

Applicant.

Opposition No.: 91183352

App. No.: 76/657,209

Mark: ROLA COLA

App. No.: 76/657,207

Mark: ROLA COLA NATURAL...LY

**DECLARATION OF JAMES H. JOHNSON IN SUPPORT OF OPPOSER'S
MOTION FOR AN ORDER COMPELLING DISCOVERY AND ALTERNATIVE
MOTION FOR AN ORDER SUSTAINING THE OPPOSITION**

I, James H. Johnson, declare that the following is true and correct pursuant to 28 U.S.C. Section 1746:

1. I am an attorney of Sutherland Asbill & Brennan LLP, counsel for THE COCA-COLA COMPANY ("Opposer"), and I make this declaration in support of its motion for an order compelling ROLA COLA INC. ("Applicant") to respond to Opposer's interrogatories and document requests and alternatively seeking an order sustaining the opposition.

2. This opposition was filed on April 2, 2008. A copy of the Notice of Opposition is annexed hereto as Exhibit A.

3. On or about April 3, 2008, the Board mailed a scheduling order setting forth *inter alia* the due dates for Applicant's Answer to the Notice of Opposition and the opening and closing of the Discovery Period.

4. On or about June 2, 2008, Applicant served its Answer. A copy of the Answer to Notice of Opposition is annexed hereto as Exhibit B.

5. On December 11, 2008, Opposer served its First Set of Interrogatories, First Request For Production of Documents and Things and First Request for Admissions (collectively "First Discovery Requests"). Copies of the First Discovery Requests are annexed hereto as Exhibits C, D and E, respectively.

6. Applicant failed to respond to the First Discovery Requests by January 15, 2009. Indeed, Applicant has not, to date, responded to the First Discovery Requests.

7. Opposer has made a good faith effort to secure Applicant's responses voluntarily. By email dated January 30, 2009, Opposer's counsel asked Applicant's counsel, Ezra Sutton, whether and when Applicant would comply with the First Discovery Requests. No response was received. A copy of the January 30 email is annexed hereto as Exhibit F.

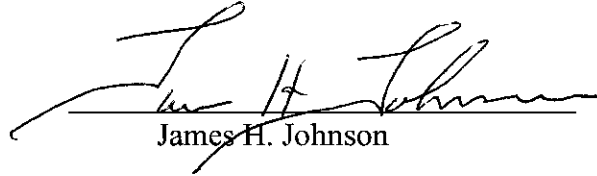
8. On February 6, 2009, I reminded Applicant's counsel via email and letter that responses to the First Discovery Requests were due on January 15, 2009. Opposer's counsel also asked counsel to advise, within seven (7) business days, when responses would be forthcoming and to produce the requested discovery no later than fourteen (14) business days. I did not receive a response to this letter, a copy of which is annexed hereto as Exhibit G.

9. By email dated February 18, 2009, Applicant's counsel was reminded once again that responses to the First Discovery Requests were due on January 15, 2009. The February 18 email advised Applicant that if Opposer's counsel did not receive responses to the First Discovery Requests by February 26, 2009, Opposer would seek an order from the TTAB compelling Applicant's compliance with its discovery obligations. A copy of the February 18 email is annexed hereto as Exhibit H. No response to this correspondence has been received.

10. To date, neither Applicant, nor its counsel has responded in any form to the First Discovery Requests.

I declare that the foregoing is true and correct under penalties of perjury.

Executed on March 4, 2009 in Atlanta, Georgia.



James H. Johnson

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2009, a true and correct copy of the foregoing DECLARATION OF JAMES H. JOHNSON IN SUPPORT OF OPPOSER'S MOTION FOR AN ORDER COMPELLING DISCOVERY OR SUSTAINING THE OPPOSITION was served on counsel for Applicant by sending the same via first class mail, postage prepaid, in an envelope addressed as follows:

Ezra Sutton, Esq.
EZRA SUTTON, P.A.
Plaza 9, 900 U.S. Hwy. 9
Woodbridge, New Jersey 07905

A handwritten signature in black ink, appearing to read 'Ezra Sutton', is written over a horizontal line.

Exhibit A

ESTTA Tracking number: **ESTTA202359**

Filing date: **04/02/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | |
|---------------------------------------|--|
| Name | The Coca-Cola Company |
| Granted to Date of previous extension | 04/02/2008 |
| Address | One Coca-Cola Plaza Atlanta, GA 30313 UNITED STATES |
| Attorney information | Kamau King, James Johnson The Coca-Cola Company, and Sutherland, Asbill & Brennan 999 Peachtree St., NE Atlanta, GA 30309 UNITED STATES james.johnson@sablaw.com, kaking@na.ko.com Phone:404-853-8000 |

Applicant Information

| | | | |
|------------------------|--|------------------------|------------|
| Application No | 76657209 | Publication date | 12/04/2007 |
| Opposition Filing Date | 04/02/2008 | Opposition Period Ends | 04/02/2008 |
| Applicant | ROLA COLA INC. 510 Deal Lake Drive Allenhurst, NJ 07712 UNITED STATES | | |

Goods/Services Affected by Opposition

| |
|--|
| Class 032. First Use: 1982/12/00 First Use In Commerce: 1982/12/00 All goods and services in the class are opposed, namely: Non-alcoholic carbonated beverages; non-alcoholic beverages derived from the kola nut; non-alcoholic beverages made from fruit juices |
|--|

Applicant Information

| | | | |
|------------------------|---|------------------------|------------|
| Application No | 76657207 | Publication date | 12/04/2007 |
| Opposition Filing Date | 04/02/2008 | Opposition Period Ends | |
| Applicant | ROLA COLA, INC. 510 Deal Lake Drive Allenhurst, NJ 07712 UNITED STATES | | |

Goods/Services Affected by Opposition

| |
|---|
| Class 032. All goods and services in the class are opposed, namely: Non-alcoholic carbonated beverages; non- |
|---|

alcoholic beverages derived from the kola nut; non-alcoholic beverages made from fruit juices

Grounds for Opposition

| | |
|--------------------------------------|-----------------------------|
| False suggestion of a connection | Trademark Act section 2(a) |
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| Dilution | Trademark Act section 43(c) |

Marks Cited by Opposer as Basis for Opposition

| | | | |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 22406 | Application Date | 05/14/1892 |
| Registration Date | 01/31/1893 | Foreign Priority Date | NONE |
| Word Mark | COCA-COLA | | |
| Design Mark | | | |
| Description of Mark | The said trade-mark of said company consists of the word or words "Coca Cola". These words have been generally written as a compound word, and in the particular form represented in the accompanying fac-simile, that is to say, with the lower portion of the "C" beginning the word "Coca" extended under the entire word, in the form of a dash, and the top of the "C" beginning the word "Cola" extended over the letters following in the form of a dash. Upon the dash of the first "C" said corporation generally has the word "Trade-Mark". While said corporation prefers to form the initial "C's" as just described, and also to form the word as a compound word, yet the word may be altogether as one word or separately as two words, and the dashes omitted, without materially altering the character of the said trade-mark, the essential feature of which is the word "Coca-Cola". | | |
| Goods/Services | Class U045 (International Class 032). First use: First Use: 1887/06/28 First Use In Commerce: 1887/06/28 NUTRIENT OR TONIC BEVERAGES | | |

| | | | |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 238145 | Application Date | 09/13/1927 |
| Registration Date | 01/31/1928 | Foreign Priority Date | NONE |
| Word Mark | COCA-COLA | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class U045 (International Class 032). First use: First Use: 1886/05/00 First Use In Commerce: 1886/05/00 BEVERAGES AND SYRUPS FOR THE MANUFACTURE OF SUCH BEVERAGES | | |

| | | | |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 238146 | Application Date | 09/13/1927 |
| Registration Date | 01/31/1928 | Foreign Priority Date | NONE |
| Word Mark | COCA-COLA | | |
| Design Mark | | | |
| Description of Mark | NONE | | |

| | |
|----------------|--|
| Goods/Services | Class U045 (International Class 032). First use: First Use: 1886/05/00 First Use In Commerce: 1886/05/00 BEVERAGES AND SYRUPS FOR THE MANUFACTURE OF SUCH BEVERAGES |
|----------------|--|

| | | | |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 1432152 | Application Date | 05/27/1986 |
| Registration Date | 03/10/1987 | Foreign Priority Date | NONE |
| Word Mark | COCA-COLA | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 032. First use: First Use: 1986/01/14 First Use In Commerce: 1986/01/14 SOFT DRINKS [AND SYRUPS AND CONCENTRATES FOR MAKING THE SAME] | | |

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

| | |
|-----------|---------------------------|
| Signature | /James Johnson/ |
| Name | Kamau King, James Johnson |
| Date | 04/02/2008 |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE COCA-COLA COMPANY,

Opposer,

v.

ROLA COLA, INC.,

Applicant.

E-FILING

Opposition No.: _____

App. No.: 76/657,209

Mark: ROLA COLA

App. No.: 76/657,207

Mark: ROLA COLA NATURAL...LY




CONSOLIDATED NOTICE OF OPPOSITION

The Coca-Cola Company (“Opposer”), a corporation organized and existing under the laws of the state of Delaware, having its office and principal place of business at One Coca-Cola Plaza, N.W., Atlanta, GA 30313, believes that it will be damaged by registration of ROLA COLA, Application Serial No. 76/657,209, and ROLA COLA NATURAL...LY, intent-to-use Application Serial No. 76/657,207, as they relate to all goods recited in the applications, namely, “[n]on-alcoholic carbonated beverages; non-alcoholic beverages derived from the kola nut; non-alcoholic beverages made from fruit juices.”¹ As grounds for opposition, Opposer hereby alleges:

1. On information and belief, Rola Cola, Inc. (“Applicant”) is a New Jersey corporation having its principal place of business at 510 Deal Lake Drive, Allenhurst, New Jersey 07712.

¹ The applications at issue herein are owned by the same entity, recite the same goods, and are directed to marks, one of which completely encompasses the other. Therefore, the Coca-Cola Company has filed a single Consolidated Notice of Opposition in accordance with 37 C.F.R. § 2.104(b) and TBMP § 305.

2. Since as early as 1887, Opposer and its related companies have used the mark COCA-COLA and various formatives thereof (collectively, the “COCA-COLA Marks”) in connection with beverages and syrups and concentrates for making beverages, in International Class 32. The Opposer is also the owner of numerous federal registrations for the COCA-COLA Marks including:

| Mark | Registration Number | Registration Date | International Class | Goods |
|--|---------------------|-------------------|---------------------|---|
|  | 22406 | 1/31/1893 | 32 | Nutrient or tonic beverages |
| COCA-COLA | 0238145 | 9/13/1927 | 32 | Beverages and syrups for the manufacture of such beverages. |
|  | 0238146 | 9/13/1927 | 32 | Beverages and syrups for the manufacture of such beverages |
|  | 1432152 | 5/27/1986 | 32 | Soft drinks and syrup and concentrate for making the same |

3. The aforementioned registrations are valid, subsisting and incontestable and are *conclusive* evidence of Opposer’s exclusive right to use the COCA-COLA Marks and to prevent registration of confusingly similar marks.

4. Opposer and its predecessors in interest have used the COCA-COLA Marks in the United States and all over the world in connection with its beverage products.

5. The COCA-COLA Marks have achieved substantial fame and goodwill through Opposer’s continuous and extensive use in commerce.

6. The applications opposed herein were signed by Joseph Dwek on March 21, 2006 and filed on March 24, 2006. The application for ROLA COLA claims a first use date of December, 1982, and was assigned Application Serial No. 76/657,209 by the U.S. Patent and

Trademark Office. The application for ROLA COLA NATURAL...LY was filed on an intent-to-use basis and was assigned Application Serial No. 76/657,207 by the U.S. Patent and Trademark Office.

7. The opposed goods recited in both applications, namely, “[n]on-alcoholic carbonated beverages; non-alcoholic beverages derived from the kola nut; non-alcoholic beverages made from fruit juices” are identical and/or closely related to the goods promoted and sold by Opposer through use of the COCA-COLA Marks.

8. The ROLA COLA and ROLA COLA NATURAL...LY marks of the applications at issue herein are very similar in appearance to Opposer’s COCA-COLA Marks.

9. The ROLA COLA and ROLA COLA NATURAL...LY marks of the applications at issue herein are very similar in pronunciation to Opposer’s COCA-COLA Marks.

10. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant has any constructive or actual right in the ROLA COLA mark prior to the date of first use of December, 1982 alleged in the application opposed herein.

11. As to the ROLA COLA mark, there is no issue of priority. Opposer has priority by virtue of its registration and continuous use of the COCA-COLA Marks well prior to the alleged date of first use recited in the application opposed herein.

12. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant has any constructive or actual right in the ROLA COLA NATURAL...LY mark prior to March 24, 2006, the filing date of the intent-to-use application opposed herein.

13. As to the ROLA COLA NATURAL...LY mark, there is no issue of priority. Opposer has priority by virtue of its registration and continuous use of the COCA-COLA Marks well prior to the filing date of the intent-to-use application opposed herein.

14. By virtue of Opposer's extensive advertising, promotion and sales through use of the COCA-COLA Marks, the COCA-COLA Marks have become well known to the public as an indication of source for Opposer's various beverage and related goods.

15. Concurrent registration of the ROLA COLA and ROLA COLA NATURAL...LY marks by Applicant in association with the opposed goods would result in irreparable damage to Opposer as consumers would be likely to believe, mistakenly, that Applicant's registered marks are affiliated with or approved by Opposer.

16. Concurrent registration of the ROLA COLA and ROLA COLA NATURAL...LY marks by Applicant in association with the opposed goods would result in irreparable damage to Opposer as consumers would be likely to consider Applicant's goods offered under its registered marks as emanating from Opposer, and purchase such goods, resulting in a loss of sales to Opposer.

17. If Applicant is permitted to obtain registration of the ROLA COLA and ROLA COLA NATURAL...LY (and Design) marks in association with the opposed goods, confusion within the meaning of Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)) is likely to result, to the detriment of COCA-COLA.

18. By virtue of Opposer's extensive and continuous use of the COCA-COLA Marks, Opposer's identity in the trade is associated with, and symbolized by, the COCA-COLA Marks.

19. The ROLA COLA and ROLA COLA NATURAL...LY marks opposed herein are a close approximation of Opposer's identity and, if registered, will be recognized as such by consumers.

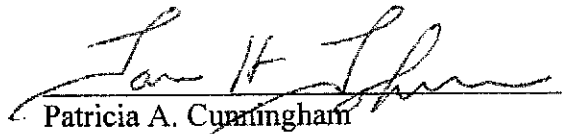
20. If Applicant is permitted to obtain registrations for the ROLA COLA and ROLA COLA NATURAL...LY marks opposed herein in association with the opposed goods, such registrations will uniquely and unmistakably call to mind and point to Opposer's famous identity, thereby falsely suggesting an association with Opposer in violation of Section 2(a) of the Trademark Act (15 U.S.C. § 1052(a)).

21. Registration of the ROLA COLA and ROLA COLA NATURAL...LY marks by Applicant are likely to dilute and impair Opposer's rights and otherwise lessen the capability of Opposer's famous COCA-COLA marks to identify and distinguish Opposer's goods and services. Such contemporaneous use and registration will eventually result in a lack of designation and indication of origin, and a loss of distinctiveness and exclusivity of Opposer's famous COCA-COLA marks in violation of Section 43(c) of the Trademark Act (15 U.S.C. § 1125(c)).

22. The bona fides of Applicant's intent-to-use the ROLA COLA NATURAL...LY mark are not apparent from materials of record in Application Serial No. 76657207. Opposer therefore challenges the same and leaves Applicant to its proofs regarding the nature and sufficiency of its intent-to-use at the time of Joseph Dwek's execution of the intent-to-use application opposed herein.

WHEREFORE, Opposer requests that Application Serial Nos. 76/657,209 and 76/657,207 be rejected for all goods recited in class 32, that no registrations be issued in connection with the opposed goods of the applications, and that this consolidated opposition be sustained in favor of Opposer.

SUTHERLAND ASBILL & BRENNAN LLP



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e-mail: james.johnson@sablaw.com

Attorney for Opposer

Dated: April 2, 2008

PROOF OF SERVICE
[F.R.C.P. Rule 5, F.R.A.P. 25]

I declare that I am employed in Atlanta, GA; I am over the age of 18 and am not a party to the above identified action; my business address is 999 Peachtree St., Atlanta, Georgia, 30309. On the date set forth below, I served a true and accurate copy of the document(s) entitled: CONSOLIDATED NOTICE OF OPPOSITION on the party(ies) in this action by placing said copy(ies) in a sealed envelope each addressed as follows:

Applicant:

ROLA-COLA
510 Deal Lake Drive
Allenhurst, New Jersey 07712

☐ [By First Class Mail] I am readily familiar with Sutherland Asbill & Brennan LLP's practice for collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document(s), by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business.

☒ [By Overnight Courier] I caused each envelope to be delivered by a commercial carrier service for overnight delivery to the offices of the addressee(s).

☐ [By Hand] I directed each envelope to the party(ies) so designated on the service list to be delivered by courier this date.

☒ [By Facsimile Transmission] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above.

☐ [By Electronic Transmission] I caused said document to be sent by electronic transmission to the e-mail address(es) indicated for the party(ies) listed above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this date at Atlanta, Georgia.

Dated: 4/2/08

Paul B. Patton

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 76/657,209 & 76/657,207

Filed: March 24, 2006

Published in the Official Gazette: December 4, 2007

Marks: **ROLA COLA & ROLA COLA NATURAL...LY**- Class 032

| | | |
|--|---|----------------------------|
| <hr style="border: none; border-top: 1px solid black; margin-bottom: 5px;"/> THE COCA-COLA COMPANY, | : | |
| v. Opposer, | : | VIA ESTAA |
| | : | Opposition No.: 91/183,352 |
| ROLA COLA, INC. | : | |
| Applicant. | : | |
| <hr style="border: none; border-top: 1px solid black; margin-top: 5px;"/> | : | June 2, 2008 |
| Trademark Trial and Appeal Board U.S. Patent & Trademark Office Hon. Commissioner for Trademarks P.O. Box 1451 Alexandria, Virginia 22313-1451 | | |

**ANSWER TO CONSOLIDATED NOTICE OF OPPOSITION &
AFFIRMATIVE DEFENSES**

Sir:

Applicant, Rola Cola, Inc., by and through its attorneys, answers the Consolidated Notice of Opposition, as follows:

1) Applicant hereby confirms that Opposer granted Applicant an Extension of Time to answer until June 2, 2008.

2) Applicant does not have sufficient information to admit or deny the allegations of paragraphs 3, 4, 5, 7, and 12 and therefore denies same and leaves Opposer to its proofs.

3) Applicant admits to the allegations in paragraphs **1, 5, 6, 10, 14, and 18** of the Consolidated Notice of Opposition.

4) Applicant denies the allegations contained in paragraphs **2, 8, 9, 11, 13, 15, 16, 17, 19, 20, 21, and 22**, of the Consolidated Notice of Opposition.

AFFIRMATIVE DEFENSES

5) Since 2005, Coca Cola has known of Applicant's marks and has not objected to Applicant's use of its marks for approximately three (3) years. Opposer's allegations are barred by laches, acquiescence, and estoppel, since Applicant, Rola Cola, Inc., and Opposer, Coca Cola, entered into an informal written distribution agreement in 2005 which permitted Rola Cola to use its marks that are now being opposed.

6) Opposer's allegations are barred by laches, acquiescence, and estoppel, since, among other acts and omissions, Opposer has failed to oppose numerous other marks using the term **COLA** in the beverage field (Classes 32, 33).

7) Opposer's trademark rights are limited to third parties using **COCA**, either alone or in combination with other wording or logos. Opposer's marks are distinguishable from Applicant's marks, **ROLA COLA & ROLA COLA NATURAL...LY**, which do not use **COCA**, and only use **COLA**, which is generic.

8) The **COCA COLA** marks owned by Opposer are dissimilar in sound, appearance, meaning and commercial impression from Applicant's marks, and are therefore not likely to lead to confusion, as defined by Section 2(d) of the Lanham Act, with Applicant's marks **ROLA COLA & ROLA COLA NATURAL...LY**.

9) Opposer cannot claim exclusive rights to **all variations of marks** in classes 032 and 033 (the beverage field) which include the generic root term **COLA***, in view of the indisputable fact that there are extensive and numerous third-party usages and federal trademark registrations that incorporate the generic root term **COLA*** in combination with other wording in Opposer's field of goods.

10) The third party usages and registrations with **COLA** are owned by various different companies, and the third party marks and registrations with **COLA** are valid, subsisting and co-exist on the Principal Trademark Register and in the marketplace.

11) Thus, Opposer does not have exclusive rights to all usages with the term **COLA**.

12) As a result of Opposer's three years of neglect in failing to object to use of Applicant's marks, despite having been made aware of same at least as early as 2005, Applicant has incurred expenses and legal fees which were unnecessary and have caused harm to Applicant.


Accordingly, in view of the foregoing defenses, Applicant requests that the Consolidated Notice of Opposition be dismissed with prejudice, and that the subject Applicant's marks be allowed to proceed to registration.

Respectfully submitted,
EZRA SUTTON, P.A.

Attorneys for Applicant,
Rola Cola, Inc.

Dated: June 2, 2008

By:



JOSEPH E. SUTTON, Esq.
For the Firm

Return Address:

EZRA SUTTON, P.A.

Plaza 9 , 900 U.S. Hwy. 9

Woodbridge, New Jersey 07095

(732) 634-3520 PH/3511 FAX

jsutton@ezraustton.com

JS/jlf

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 76/657,209 & 76/657,207

Filed: March 24, 2006

Published in the Official Gazette: December 4, 2007

Mark: **ROLA COLA & ROLA COLA NATURAL...LY**- Class 032

THE COCA-COLA COMPANY, :

Opposer,

VIA ESTAA

v. :

Opposition No.: 91/183,352

ROLA COLA, INC. :

Applicant.

: June 2, 2008

Trademark Trial and Appeal Board
U.S. Patent & Trademark Office
Hon. Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

CERTIFICATE OF SERVICE

I, JENNIFER L. FRIEDMAN, being over the age of 18 and not a party to this action, do hereby certify that the foregoing Applicant's **ANSWER TO NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES**, was served by electronic mail and first-class, postage prepaid mail on this 2nd day of June, 2008 upon the attorneys for the Opposer, namely, James H. Johnson, Esquire, of Sutherland, Asbill, and Brennan, LLP, 999 Peachtree Street, N.E., Atlanta, Georgia 30309.



JENNIFER L. FRIEDMAN

Exhibit C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE COCA-COLA COMPANY,

Opposer,

v.

ROLA COLA, INC.,

Applicant.

Opposition No.: 91183352

App. No.: 76/657,209

Mark: ROLA COLA

App. No.: 76/657,207

Mark: ROLA COLA NATURAL...LY

OPPOSER'S FIRST SET OF INTERROGATORIES

THE COCA-COLA COMPANY, pursuant to Fed. R. Civ. P. 33, and Trademark Rules 2.116(a) and 2.120(d)(1), hereby serves the following interrogatories to be answered separately and fully in writing, under oath by an officer or agent of Applicant, ROLA COLA, INC. Each separately numbered or lettered sub-part of each interrogatory requires a separate answer thereto. Furthermore, these interrogatories shall be deemed to be continuing to the fullest extent permitted by the Rules, and Applicant shall provide Opposer with any supplemental answers and additional information which shall become available to Applicant at a later date.

DEFINITIONS

The following Interrogatories and Opposer's accompanying First Set of Requests for Production of Documents and Things and First Set of Requests for Admissions are subject to the definitions set forth below:

A. The term "Opposer" shall mean, unless otherwise expressly indicated by the particular context, the named Opposer, THE COCA-COLA COMPANY, as well as shall include collectively and severally, each division, subsidiary, parent, affiliated or related

corporation, partnership, or joint venture of THE COCA-COLA COMPANY, any predecessors or successors of any of such entity (including all predecessors and successors to the property that is the subject matter of this opposition proceeding), any representative, agent, or person acting or purporting to act on behalf of each such person or entity, and, where appropriate, the officers, agents, employees, servants, representatives, and attorneys of any one or more of them. Without limiting the generality of the foregoing, the term "Opposer" shall also include licensees of THE COCA-COLA COMPANY and/or the other persons described above.

B. The term "Opposer's Marks" shall mean the mark COCA-COLA and various formatives thereof as described in paragraph 2 of the Consolidated Notice of Opposition filed in this proceeding and colorable imitation of any of the foregoing (as defined by 15 U.S.C. § 1127).

C. The term "communication" shall mean the transmittal of information in the form of facts, ideas, inquiries, or otherwise.

D. The term "date" shall mean the exact day, month, and year, if ascertainable, or if not, the best approximation, including the relationship to other events.

E. The term "document" is synonymous in meaning and equal in scope to the usage of this term and the term "tangible thing" in the Federal Rules of Civil Procedure. Each comment, or addition to, or deletion from, a document shall constitute a separate document within the meaning of this term. Without limiting the generality of the foregoing, the term "document" shall also include any and all means of conveying, storing, or memorializing information, whether in paper or other tangible physical form, or in electronic form, in the possession, custody, or control of Applicant, including, without limitation, computer e-mail.

F. Unless otherwise indicated, the term "identify":

1. When used in connection with documents, means to indicate (i) the type of document; (ii) general subject matter; (iii) date of the document; and (iv) author, addressee, and recipient.
2. When used in connection with things, including, but not limited to, goods or physical things, means to furnish a complete description of the thing, including its common designation, its composition, its physical description, and any other distinguishing characteristics.
3. When used in connection with natural persons, means to give the person's full name, present or last known address, and present or last known place of employment (including address and telephone number thereof).
4. When used in connection with business entities, means to provide the full name, principal place of business, state of incorporation or registration (if applicable), offices, and manufacturing facilities.

G. The term "Applicant" shall mean, unless otherwise expressly indicated by the particular context, the named Applicant, ROLA COLA, INC., as well as shall include, both collectively and severally, each division, subsidiary, parent, affiliated or related entity of ROLA COLA, INC., any representative, agent, or person acting or purporting to act on behalf of each such person or entity, and any predecessors or successors of any such entity (or predecessors or successors to the property which is the subject matter of this opposition proceeding), and, where appropriate, the officers, agents, employees, servants, representatives, and attorneys of any one or more such person. Without limiting the generality of the foregoing, the term "Applicant" shall also include licensees of ROLA COLA, INC. to Applicant's Marks, as defined herein, and/or the other persons or entities above described.

H. The term “Applicant's Marks” shall mean the mark ROLA COLA disclosed in opposed Application Serial No. 76/657,209 and the mark ROLA COLA NATURAL...LY DISCLOSED in opposed Application Serial No. 76/657,207 and any mark, trade name, or commercial name used by Applicant that includes the words ROLA COLA (with or without any accompanying words or designs). Whenever the term “Applicant's Marks” applies to different marks or different types of use, e.g., service mark use as opposed to trademark use, the term “Applicant's Marks” should be interpreted so as to result in multiple productions and/or separate responses. By way of example only, if Applicant's alleged date of first use of Applicant's Marks differs as between the mark ROLA COLA and ROLA COLA NATURAL...LY, then productions and/or responses as to each are to be made.

I. The term "Applicant's Goods" means any products or services that Applicant renders, markets, promotes, offers for sale, or sells (or intends to do any of the foregoing) bearing, concerning, or connected with Applicant's Marks.

J. The term "person" shall include, without limitation, individuals, associations, companies, divisions, corporations, partnerships, and any business entities, whether formal or informal.

K. As used herein, the term "regarding" means relating or referring to, incorporating, comprising, touching upon, indicating, evidencing, affirming, denying, concerned with, relevant to, or likely to lead to admissible evidence concerning.

L. The term "third party" shall include, without limitation, manufacturers, distributors, importers, merchants, retailers, wholesalers, and ultimate purchasers but shall not include Opposer or Applicant.

M. The terms "and" as well as "or" should be construed either disjunctively or conjunctively as necessary to bring within the scope of the request any information and

documents which might otherwise be construed to be outside its scope. Wherever appropriate herein, the singular form of a word should be interpreted in the plural, and the plural should be interpreted in the singular as necessary to bring within the scope of a request any information and documents which might otherwise be construed to be outside its scope.

INSTRUCTIONS

1. Where an interrogatory answer differs as between different marks or types of goods or services, the answer shall set forth such different information as is applicable to each of the different marks or types of goods or services.

2. Where an interrogatory answer differs as between different types of use of the mark (e.g., first use as a service mark and first use as a trademark), the answer shall set forth such different information as is applicable to each of the different types of use.

3. Where an interrogatory answer differs as between different persons and entities falling within the scope of the term “Applicant” (e.g., the alleged first use of the mark by the named Applicant and the first use of the mark by a licensee or related corporate entity of the named Applicant), the answer shall set forth such different information as is applicable to each of the different persons and or entities.

4. For each document or tangible thing otherwise responsive to any interrogatory or document request which has been lost or destroyed since its preparation or receipt, state (i) the request to which it would be responsive; (ii) the circumstances whereby the document or tangible thing was lost or destroyed; and (iii) the identity of all persons having knowledge of such loss or destruction.

5. If Applicant refuses to identify and or produce any document(s) based upon a claim of confidentiality, privilege, or work product immunity, Applicant shall, in log form, (i)

identify each document by its author, intended recipient(s), the date of the document, and its general subject matter, and (ii) set forth for each withheld document the particular basis for the refusal of production.

6. If Applicant elects to produce documents or other tangible things responsive to any interrogatory, Applicant must state the particular bates number or range or other specific numerical identifier for the particular documents or other tangible things responsive to each specific interrogatory as required by Fed. R. Civ. P. 33(d).

7. These interrogatories shall be deemed continuing in accordance with Fed. R. Civ. P. 26(e).

INTERROGATORIES

Interrogatory No. 1

Identify each officer or agent answering or assisting in the answering of these Interrogatories, Opposer's First Request for Production of Documents and Things, and Opposer's First Set of Requests for Admissions, and the duties and scope of such duties performed by such officer or agent at all times referred to herein.

Interrogatory No. 2

Identify Applicant's supervisory employees responsible for the sale or intended sale of Applicant's Goods under Applicant's Marks.

Interrogatory No. 3

Identify (as defined above and also including, job title, and relationship to Applicant) the person(s) who first conceived of Applicant's Marks.

Interrogatory No. 4

Set forth the reason(s) for the selection of Applicant's Marks, including the date on which

the marks were selected.

Interrogatory No. 5

List any alternative marks or forms of Applicant's Marks that were considered by Applicant.

Interrogatory No. 6

Describe the process by which Applicant's Marks were selected.

Interrogatory No. 7

Identify all searches of any type conducted by or on behalf of Applicant in connection with its decision to apply for federal registration of Applicant's Marks.

Interrogatory No. 8

Set forth the date and circumstances under which Applicant learned of Opposer's existence.

Interrogatory No. 9

Set forth the date and circumstances under which Applicant learned of Opposer's Mark.

Interrogatory No. 10

State whether Applicant had knowledge of the existence of Opposer or Opposer's Mark prior to Applicant's selection of Applicant's Marks.

Interrogatory No. 11

State whether Applicant considered the issue of likelihood of confusion between Opposer's Mark and Applicant's Marks prior to selection of Applicant's Marks.

Interrogatory No. 12

Identify each person involved in the U.S. federal application prosecution for Applicant's Marks.

Interrogatory No. 13

Identify, by common commercial descriptive name, each product or service actually used or intended to be used with Applicant's Marks.

Interrogatory No. 14

For each product or service identified in response to Interrogatory No. 13, set forth the date of first use or anticipated date with which Applicant has used or intends to use Applicant's Marks.

Interrogatory No. 15

For each product or service identified in response to Interrogatory No. 13, identify all vendors through which each product or service is sold or is intended to be sold.

Interrogatory No. 16

Identify the vendor through which Applicant's first sale of goods or services bearing Applicant's Marks was consummated.

Interrogatory No. 17

For each product or service identified in response to Interrogatory No. 13, state, by calendar quarter, the dollar amount expended by Applicant to advertise Applicant's Marks in connection therewith.

Interrogatory No. 18

For each product or service identified in response to Interrogatory No. 13, state, by calendar quarter, the approximate revenue received to date from sales of Applicant's Goods under Applicant's Marks.

Interrogatory No. 19

Identify all methods of advertisement in which Applicant has promoted or plans to promote Applicant's Goods in connection with Applicant's Marks.

Interrogatory No. 20

Identify those publications (e.g., printed and electronic) in which Applicant has promoted or plans to promote Applicant's Goods in connection with Applicant's Marks.

Interrogatory No. 21

Identify all person(s) involved in the creation or distribution of advertisements for Applicant's Goods in connection with Applicant's Marks.

Interrogatory No. 22

Identify any market research conducted on behalf of Applicant regarding Applicant's Marks.

Interrogatory No. 23

Identify each reported instance anywhere of actual confusion, mistake, or deception known to Applicant between Applicant's Goods promoted or sold in connection with Applicant's Marks and Opposer or Opposer's Mark.

Interrogatory No. 24

Identify any contractual agreements entered into by Applicant regarding Applicant's Marks.

Interrogatory No. 25

Identify the types of ultimate consumers to whom Applicant offers or intends to offer for sale Applicant's Goods in connection with Applicant's Marks.

Interrogatory No. 26

For each product or service identified in response to Interrogatory No. 13, identify the entity from which each product or service originates.

Interrogatory No. 27

State all facts supporting Applicant's claim that "Opposer's allegations are barred by laches, acquiescence, and estoppel" in Paragraphs 5 and 6 of Applicant's Answer filed in this proceeding.

Interrogatory No. 28

State all facts supporting Applicant's claims in its "Affirmative Defenses" in Paragraphs 5 – 12 of Applicant's Answer filed in this proceeding.

Interrogatory No. 29

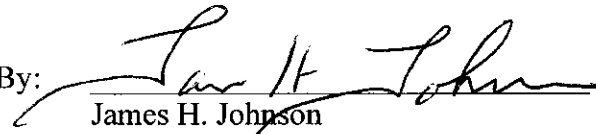
For each product or service identified in response to Interrogatory No. 13, set forth the wholesale and retail sales price(s).

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

Date: 12/11/06

By:



James H. Johnson

Daniel J. Warren

David E. Weslow

999 Peachtree Street, N.E.

Atlanta, Georgia 30309

404.853.8000 (telephone)

404.853.8806 (facsimile)

e-mail: james.johnson@sutherland.com

Attorneys for Opposer

THE COCA-COLA COMPANY

PROOF OF SERVICE
[F.R.C.P. Rule 5, F.R.A.P. 25]

I declare that I am employed in Atlanta, Georgia I am over the age of 18 and am not a party to the above identified action; my business address is 999 Peachtree Street. NW On the date set forth below, I served a true and accurate copy of the document(s) entitled:

OPPOSER'S FIRST SET OF INTERROGATORIES on the party(ies) in this action by placing said copy(ies) in a sealed envelope each addressed as follows:

Ezra Sutton
EZRA SUTTON, P.A.
Plaza 9, 900 U.S. Hwy. 9
Woodbridge, New Jersey 07095
Email: Esutton@ezrasutton.com

Counsel for Applicant

☒ [By First Class Mail] I am readily familiar with Sutherland Asbill & Brennan LLP's practice for collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document(s), by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business.

☐ [By Overnight Courier] I caused each envelope to be delivered by a commercial carrier service for overnight delivery to the offices of the addressee(s).

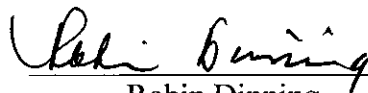
☐ [By Hand] I directed each envelope to the party(ies) so designated on the service list to be delivered by courier this date.

☐ [By Facsimile Transmission] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above.

☐ [By Electronic Transmission] I caused said document to be sent by electronic transmission to the e-mail address(es) indicated for the party(ies) listed above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this date at Atlanta, Georgia.

Dated: 12/11/08



Robin Dinning

Exhibit D

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE COCA-COLA COMPANY,

Opposer,

v.

ROLA COLA, INC.,

Applicant.

Opposition No.: 91183352

App. No.: 76/657,209

Mark: ROLA COLA

App. No.: 76/657,207

Mark: ROLA COLA NATURAL...LY

**OPPOSER'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS**

THE COCA-COLA COMPANY, pursuant to Fed. R. Civ. P. 34 and Trademark Rules 2.116(a) and 2.120(d)(2), hereby requests that ROLA COLA, INC. produce those documents and tangible things listed below for inspection and copying, and that the production be made accompanying Applicant's service of its written responses upon Opposer at the offices of Sutherland Asbill & Brennan LLP, 999 Peachtree Street., Atlanta, Georgia 30309-3996. Furthermore, these requests shall be deemed to be continuing to the fullest extent permitted by the Rules.

DEFINITIONS AND INSTRUCTIONS

A. The definitions and instructions contained in Opposer's First Set of Interrogatories (the "Interrogatories") are incorporated herein by reference.

B. With respect to any document requested for which a claim of privilege, work product, or confidentiality is made, specify (in log form) the nature of the privilege, the nature of the document, identify by name, address, title, and business affiliation, the writer, the addressee, and all recipients thereof, and set forth the general subject matter to which the document relates,

and applicable date.

C. Applicant shall separately identify the Request by number pursuant to which each document or tangible thing is produced.

D. A written response to this Request is required pursuant to Fed. R. Civ. P. 34.

REQUESTS

1. Produce those documents and things identified by Applicant in response to Opposer's First Set of Interrogatories.

2. Produce those documents and things regarding the organization of all entities falling within the scope of the term Applicant, including but not limited to, articles of incorporation, bylaws, shareholder agreements, and a list of the current and previous Boards of Directors and Officers, and their respective dates of service.

3. Produce those documents and things regarding the legal and operational relationship between Applicant and any affiliated or related entities, including licensees.

4. Produce those documents and things regarding the creation, selection, and adoption of Applicant's Marks by or on behalf of Applicant, including other marks considered and at any time used in connection with Applicant's Goods.

5. Produce those documents and things regarding any investigation, such as a trademark, service mark, trade name, Internet name, or corporate name search, concerning Applicant's selection, first use, or decision to apply for federal registration of Applicant's Marks.

6. Produce those trademark searches, including, without limitation, searches of databases such as, for example, LEXIS, DIALOG, THOMSON & THOMSON, TRADEMARKSCAN, TRADEMARK.COM, or CCH CORSEARCH, and reports or investigations concerning the use or registration of Applicant's Marks.

7. Produce those documents and things regarding and including any legal opinions

concerning Opposer's Mark, Applicant's Marks, or Applicant's Goods.

8. Produce those documents and things regarding any logo, or design, or additional mark used in commerce by Applicant in connection with Applicant's Marks.

9. Produce those documents and things regarding any changes, contemplated or made, in any logo, or design, or additional mark used in commerce or intended to be used in commerce in connection with Applicant's Marks, including art work, two specimen samples of each variation, and any related correspondence concerning the consideration and decision on whether to implement such changes.

10. Produce those documents and things regarding the filing in the United States of any federal or state applications for Applicant's Marks, including copies of corporate minutes, internal memoranda, and correspondence (including, but not limited to computer emails) concerning discussions and decisions to file such documents.

11. Produce those documents and things related to each and every meeting of the Board of Directors, or corporate officers, or managerial employees of Applicant in which Applicant's Marks were discussed, including, but not limited to the minutes of each meeting.

12. Produce those documents and things related to each and every meeting of the Board of Directors, or corporate officers, or managerial employees of Applicant in which Opposer's Mark was discussed, including, but not limited to the minutes of each meeting.

13. All documents in which Opposer's Mark is discussed.

14. Produce those documents and things regarding the maintenance of any federal or state registrations in the United States concerning Applicant's Marks at any time filed by Applicant, including copies of maintenance documents (e.g., renewals, Section 8 and 15 affidavits), corporate minutes, internal memoranda, and correspondence (including, but not limited to computer emails) concerning discussions and decisions to file such documents.

15. Produce those documents and things regarding the first use anywhere, and the first use in U.S. commerce, of Applicant's Marks by or on behalf of Applicant.

16. Produce those documents and things sufficient to demonstrate the type(s) of goods or services in connection with which Applicant's Marks have been used or are proposed to be used.

17. Produce representative product or service samples or promotional materials demonstrating Applicant's current and former use of Applicant's Marks.

18. Produce those documents and things regarding any formulas, specifications, quality standards, descriptions, or the like concerning Applicant's Goods.

19. Produce those documents and things demonstrating the quality of Applicant's Goods, including awards and the like concerning such quality.

20. Produce those documents and things sufficient to demonstrate the geographical areas and channels of trade in which Applicant's Marks have been used or are proposed to be used, including without limitation those documents and things evidencing or otherwise concerning the cities and states in the United States where Applicant has marketed, promoted, rendered, or sold Applicant's Goods.

21. Produce those documents and things regarding promotion or sale of Applicant's Goods from the United States to purchasers located outside of the United States through use of Applicant's Marks.

22. Produce representative documents and things regarding communications between Applicant and distributors, retailers, or franchisees concerning Applicant's Goods, including, but not limited to, contractual agreements and any updates thereto.

23. Produce representative documents and things regarding the stores (actual and electronic or "virtual"), retail outlets, offices, or other locations at which Applicant has marketed,

promoted, rendered, or sold Applicant's Goods.

24. Produce representative documents and things regarding the types of customers with whom Applicant does or intends to do business in connection with Applicant's Marks, and the ultimate purchasers to whom Applicant offers or intends to offer Applicant's Goods.

25. Produce those documents and things sufficient to demonstrate the dollar value of actual and/or projected sales of Applicant's Goods advertised under Applicant's Marks.

26. Produce those documents and things sufficient to demonstrate the amount of money expended and budgeted to promote Applicant's Goods with Applicant's Marks, including, but not limited to invoices, budget documents, and accounts payable ledgers.

27. Produce those documents and things regarding each printed and electronic media publication in which Applicant has advertised or promoted, is advertising or promoting, or plans to advertise or promote Applicant's Goods in connection with Applicant's Marks.

28. Produce those documents and things regarding the date and circumstances under which Applicant became aware of the existence, Opposer's use, or application for registration in any national trademark office, of Opposer's Mark.

29. Produce those documents and things regarding any action taken by Applicant in response to Applicant's awareness of Opposer's Mark.

30. Produce those documents and things regarding communications within Applicant and/or between Applicant and third parties in response to Applicant's awareness of Opposer's Mark.

31. Produce those documents and things regarding Applicant's knowledge of Opposer.

32. Produce copies of any surveys, market research tests, demographic or consumer profile studies, and focus group inquiries regarding the ultimate purchasers or potential ultimate purchasers of Applicant's Goods actually or intended to be sold, offered for sale, advertised, or

promoted in connection with Applicant's Marks, including the results thereof.

33. Produce copies of any comparison studies, surveys, market research tests, and those documents relating thereto, including the results thereof, concerning the goods or services advertised, promoted and sold in connection with Applicant's Marks and the goods or services advertised, promoted, distributed, and sold in connection with Opposer's Mark, including, but not limited to, those relating to confusion or likelihood of confusion between Applicant's Goods and any goods or services advertised, promoted, distributed, or sold in connection with Opposer's Mark.

34. Produce those documents and things regarding any instance in which a person has been confused, mistaken, or deceived as to the source of Applicant's Goods advertised, promoted, offered for sale, or sold in connection with Applicant's Marks, and Opposer or the source of goods or services advertised, promoted, offered for sale, or sold in connection with Opposer's Mark.

35. Produce those documents and things regarding any assignment, consent, authorization, license, or permission between Applicant and any individual(s) or entity(ies) regarding Applicant's Marks, including any modifications made thereto.

36. Produce those communications between Applicant and any third party concerning the subject opposition proceeding.

37. Produce those communications between Applicant and any third party concerning use of Applicant's Marks or any marks similar to Applicant's Marks, including any demand letters sent or received by Applicant and any responses thereto.

38. For each expert Applicant intends to call to provide testimony in this proceeding, produce:

A. Any written report provided by the expert relating to the subject matter of

this proceeding;

B. A complete written statement of all opinions to be expressed by the expert in this proceeding, and the basis and reason therefor;

C. All documents reflecting the data or other information considered by the expert in forming his or her opinions;

D. All exhibits to be used by the expert as a summary of or support for his or her opinions;

E. Those documents stating the qualifications of the expert, such as would be reflected in a resume, curriculum vitae, biography, summary, or otherwise;

F. A written list of all publications authored by the expert within the last ten years;

G. Documents reflecting the compensation to be paid for the expert's preparation time and time taken to provide testimony; and

H. A written list of any other cases in which the expert has testified as an expert at trial, in an administrative proceeding, or by deposition within the past four years.

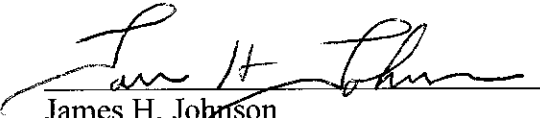
39. Produce all deposition transcripts, answers to interrogatories, responses to requests for production of documents, and answers to requests for admissions in all litigations involving Applicant's Marks.

40. Produce all documents supporting or relating to Applicant's statements "in support of its defense" set forth in Paragraphs 5 through 12 of Applicant's Answer filed in this proceeding.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

Date: 12/11/08

By: 
James H. Johnson
Daniel J. Warren
David E. Weslow
999 Peachtree Street, N.E.
Atlanta, Georgia 30309
404.853.8000 (telephone)
404.853.8806 (facsimile)
e-mail: james.johnson@sutherland.com

Attorneys for Opposer
THE COCA-COLA COMPANY

PROOF OF SERVICE
[F.R.C.P. Rule 5, F.R.A.P. 25]

I declare that I am employed in Atlanta, Georgia; I am over the age of 18 and am not a party to the above identified action; my business address is 999 Peachtree Street, Atlanta, Georgia 30309-3996. On the date set forth below, I served a true and accurate copy of the document(s) entitled: **OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS** on the party(ies) in this action by placing said copy(ies) in a sealed envelope each addressed as follows:

Ezra Sutton
Ezra Sutton, P.A.
Plaza 9, 900 U.S. Hwy. 9
Woodbridge, New Jersey 07095
Email: Esutton@ezrasutton.com

Counsel for Applicant

☒ [By First Class Mail] I am readily familiar with Sutherland Asbill & Brennan LLP's practice for collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document(s), by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business.

☐ [By Overnight Courier] I caused each envelope to be delivered by a commercial carrier service for overnight delivery to the offices of the addressee(s).

☐ [By Hand] I directed each envelope to the party(ies) so designated on the service list to be delivered by courier this date.

☐ [By Facsimile Transmission] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above.

☐ [By Electronic Transmission] I caused said document to be sent by electronic transmission to the e-mail address(es) indicated for the party(ies) listed above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this date at Atlanta, GA.

Dated: 12/11/08

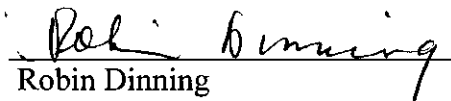

Robin Dinning

Exhibit E

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE COCA-COLA COMPANY

Opposer,

v.

ROLA COLA, INC

Applicant.

Opposition No.: 91183352

App. No.: 76/657,209

Mark: ROLA COLA

App. No. : 76/657,207

Mark: ROLA COLA NATURAL...LY

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS

Opposer, THE COCA-COLA COMPANY pursuant to Fed. R. Civ. P. 36 and Trademark Rules 2.116 and 2.120, hereby requests that Applicant, ROLA COLA, INC., make the following admissions within (30) days of service of these Requests for Admission.

DEFINITIONS AND INSTRUCTIONS

A. The definitions and instructions contained in Opposer's First Set of Interrogatories (the "Interrogatories") are incorporated herein by reference.

B. With respect to any information that is withheld based upon a claim of privilege, work product, or confidentiality, specify (in log form) the nature of the privilege and, if applicable, identify the relevant document and identify by name, address, title, and business affiliation, the writer, the addressee, and all recipients thereof, and set forth the general subject matter to which the document relates, and applicable date.

C. If Applicant objects to any subpart or portion of a Request for Admission, state Applicant's objection, and answer the unobjectionable subparts of the request and/or supply the unobjectionable information requested.

D. If any of the following requests cannot be responded to in full after exercising reasonable diligence to secure the information, please so state, supply the information for those portions Applicant is able to answer, and supply whatever information Applicant has concerning the portion that cannot be answered in full. If Applicant's response is qualified in any particular respect, set forth the details of such qualification.

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that Applicant's Marks looks similar to Opposer's Mark.

REQUEST FOR ADMISSION NO. 2:

Admit that pronunciation of Applicant's Marks sounds similar to pronunciation of Opposer's Mark.

REQUEST FOR ADMISSION NO. 3:

Admit that Applicant's Marks evoke a commercial impression similar to the commercial impression of Opposer's Mark.

REQUEST FOR ADMISSION NO. 4:

Admit that Applicant's Marks have the same number of syllables as Opposer's Mark.

REQUEST FOR ADMISSION NO. 5:

Admit that Applicant's Marks differ in only two letters from Opposer's Mark.

REQUEST FOR ADMISSION NO. 6:

Admit that some of the goods identified in Application Serial No. 76/675,209 and 76/657,207 are identical to goods covered by Opposer's Mark.

REQUEST FOR ADMISSION NO. 7:

Admit that Opposer began use of Opposer's Mark prior to Applicant's use of Applicant's Marks.

REQUEST FOR ADMISSION NO. 8:

Admit that Applicant made no use of Applicant's Marks in commerce prior to June 28, 1887.

REQUEST FOR ADMISSION NO. 9:

Admit that Opposer's Mark is the subject of several U.S. federal registrations in International Class 32 that were filed and registered before Applicant began use of Applicant's Marks.

REQUEST FOR ADMISSION NO. 10:

Admit that Applicant conducted no clearance or availability searches in the United States before filing its applications for federal registration of Applicant's Marks.

REQUEST FOR ADMISSION NO. 11:

Admit that clearance or availability searches obtained by Applicant for Applicant's Marks included references to Opposer's Mark.

REQUEST FOR ADMISSION NO. 12:

Admit that Applicant was aware of Opposer's Mark prior to Applicant's first use of Applicant's Marks.

REQUEST FOR ADMISSION NO. 13:

Admit that Applicant was aware of Opposer's Mark prior to Applicant filing its application for federal registration of Applicant's Marks.

REQUEST FOR ADMISSION NO. 14:

Admit that Applicant visited Opposer's Internet site prior to Applicant's filing of applications for federal registration of Applicant's Marks.

REQUEST FOR ADMISSION NO. 15:

Admit that customers of Applicant may also utilize Opposer's goods provided under Opposer's Mark.

REQUEST FOR ADMISSION NO. 16:

Admit that Applicant has not continuously used Applicant's Marks in the United States since December 1982.

REQUEST FOR ADMISSION NO. 17:

Admit that Applicant is not currently using Applicant's Marks in the United States in association with Applicant's Goods.

REQUEST FOR ADMISSION NO. 18:

Admit that Applicant has not used Applicant's Marks in the United States in association with Applicant's Goods since 2005.

REQUESTS FOR ADMISSION NO. 19:

Applicant does not intend to use Applicant's Marks in association with any products not related to soft drinks and beverage products.

REQUESTS FOR ADMISSION NO. 20:

Admit that Applicant uses Applicant's Marks in a script format.

REQUEST FOR ADMISSION NO. 21:

Admit that Applicant did not intend to use Applicant's Marks in association with any products not related to soft drinks at the time Applicant filed Application Serial Nos. 76/657,207 and 76/657,209.

REQUEST FOR ADMISSION NO. 22:

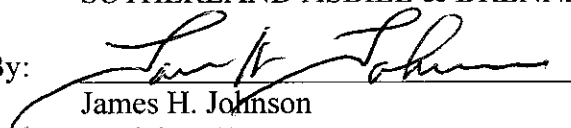
Admit that Applicant believes that consumers will associate Applicant's Marks with
Opposer and/or Opposer's Mark.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

Date: 12/11/08

By:



James H. Johnson

Daniel J. Warren

David E. Weslow

999 Peachtree Street, N.E.

Atlanta, Georgia 30309

404.853.8000 (telephone)

404.853.8806 (facsimile)

e-mail: james.johnson@sutherland.com

Attorneys for Opposer

THE COCA-COLA COMPANY

PROOF OF SERVICE
[F.R.C.P. Rule 5, F.R.A.P. 25]

I declare that I am employed in Atlanta, Georgia; I am over the age of 18 and am not a party to the above identified action; my business address is 999 Peachtree Street, Atlanta, Georgia 30309-3996 On the date set forth below, I served a true and accurate copy of the document(s) entitled: **FIRST SET OF REQUESTS FOR ADMISSIONS** on the party(ies) in this action by placing said copy(ies) in a sealed envelope each addressed as follows:

Ezra Sutton
EZRA SUTTON, P.A.
Plaza 9, 900 U.S. Hwy. 9
Woodbridge, New Jersey 07095
Email: Esutton@ezrasutton.com

Counsel for Applicant

☒ [By First Class Mail] I am readily familiar with Sutherland Asbill & Brennan LLP's practice for collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document(s), by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service where it would be deposited with the United States Postal Service that same day in the ordinary course of business.

☐ [By Overnight Courier] I caused each envelope to be delivered by a commercial carrier service for overnight delivery to the offices of the addressee(s).


☐ [By Hand] I directed each envelope to the party(ies) so designated on the service list to be delivered by courier this date.

☐ [By Facsimile Transmission] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above.

☐ [By Electronic Transmission] I caused said document to be sent by electronic transmission to the e-mail address(es) indicated for the party(ies) listed above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this date at Atlanta, Georgia.

Dated: 12/11/08



Robin Dinning

Exhibit F

Dinning, Robin

From: Johnson, James H.
Sent: Friday, January 30, 2009 7:07 PM
To: 'Ezra Sutton'
Subject: Coca-Cola vs. Rola Cola

Dear Mr. Sutton,

We are following up on the discovery documents that The Coca-Cola Company served on December 11, 2008. Rola Cola Inc.'s responses and responsive documents were due to us by January 15, 2009. To date, we have no record of receiving responses from Rola Cola Inc. If responses and responsive documents were previously sent, please advise how and when such documents were sent and provide us with copies of same by email or overnight mail.

While I realize that we have been in settlement discussions, as you know these discussions do not affect the response deadlines for discovery documents. By the way, we still do not have client approval to send you a settlement proposal, but will do so as soon as we have the requisite approvals.

We look forward to your response.

Regards,

James H. Johnson
SUTHERLAND
999 Peachtree Street, N.E.
Atlanta, Georgia 30309-3996
404-853-8806 fax
404-853-8395 telephone
Please update my email address to James.Johnson@Sutherland.com

2/19/2009

Exhibit G

JAMES H. JOHNSON, JR.
DIRECT LINE: 404.853.8395
E-mail: james.johnson@sutherland.com

February 6, 2009

**VIA EMAIL AND
FIRST CLASS MAIL**

Ezra Sutton, Esq.
EZRA SUTTON, P.A.
Plaza 9, 900 U.S. Hwy 9
Woodbridge, New Jersey 07095

Re: *The Coca-Cola Company v. Rola Cola Inc.*
Consolidated Opposition No.: 91183352
(App. Nos. 76/657,209 & 76/657,207, filed March 24, 2006)

Dear Ezra:

We have not received a response to our email of January 30, 2009 inquiring as to the status of Rola Cola's discovery responses that were due on January 15. Therefore, we are writing to initiate the meet and confer process under Fed. R. Civ. P. 37 and Trademark Rule 2.120(e)(1) with respect to Rola Cola's failure to respond to Coca-Cola's First Set of Interrogatories and First Request for Production of Documents and Things served on December 11, 2008.

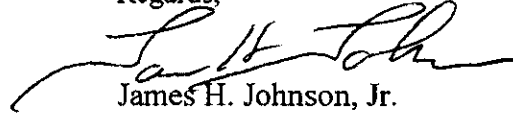
Coca-Cola's First Set of Requests for Admissions, also served on December 11, 2008, now stand admitted due to Rola Cola's failure to timely respond to the Requests. *See* Fed. R. Civ. P. 36(a)(3), TBMP § 407.03(a), and the cases cited therein.

We remain committed to trying to resolve this matter amicably. However, until we can reach a mutually acceptable proposal, we are proceeding with the discovery process. Therefore, as mentioned in prior correspondence, today we have filed a motion for a ninety (90) day extension of the discovery period. If (1) we do not receive your response within the next 7 business days advising specifically when we will receive Rola Cola's interrogatory responses and written responses and documents responding to Coca-Cola's First Request for Production of Documents and Things, and (2) we do not receive the aforementioned responses and document production within 14 business days, we intend to file a motion requesting that the opposition be sustained pursuant to Trademark Rule 2.120(g)(2) and TBMP § 527.01(b).

Finally, please note that our efforts to resolve this discovery dispute do not represent an excuse or release of Rola Cola's waiver of all objections arising from its failure to timely respond to Coca-Cola's outstanding discovery requests. *See* TBMP §§ 405.04(a), 406.04(a).

If you wish to discuss this matter, please do not hesitate to contact us.

Regards,

A handwritten signature in black ink, appearing to read "J. H. Johnson, Jr.", written in a cursive style.

James H. Johnson, Jr.

JHJ/rdd

Exhibit H

Dinning, Robin

From: Weslow, David
Sent: Wednesday, February 18, 2009 5:49 PM
To: 'esutton@ezrasutton.com'; 'pquilla@ezrasutton.com'
Cc: Johnson, James H.
Subject: The Coca-Cola Company vs. Rola Cola, Inc. - TTAB No. 91183352

Dear Mr. Sutton,

I am following up on my colleague Jim Johnson's letter of February 6, 2009 regarding the above referenced opposition proceeding. In that letter, we asked you to advise within 7 business days when we would receive Rola Cola's interrogatory response and written responses and documents responding to Coca-Cola's First Set of Interrogatories and First Requests for Production of Documents and Things—without objection. Thus, a response to our earlier letter was due by February 16, 2009.

We are writing in a continued effort to follow the meet and confer process set forth by Fed. R. Civ. P. 37 and Trademark Rule 2.120(e)(1). As you know, Rola Cola's document production and interrogatory responses were due to be served over a month ago, and we have received no response to our two prior inquiries regarding the status of Rola Cola's compliance with its discovery obligations.

As set forth in earlier correspondence, if we do not receive the aforementioned responses and document production on or before February 26, we will seek an order from the TTAB compelling Rola Cola's compliance with its discovery obligations and/or seeking further relief.

Again, our efforts to resolve this discovery dispute do not represent an excuse or release of Rola Cola's waiver of all objections arising from its failure to timely respond to Coca-Cola's outstanding discovery requests. See TBMP § 405.04 (a), 406.04(a).

Please contact us if you wish to discuss this matter.

Regards,
David Weslow

David E. Weslow
SUTHERLAND
1275 Pennsylvania Avenue, NW
Washington, DC 20004
Direct: 202.383.0487
Main: 202.383.0100
Fax: 202.637.3593
Email: david.weslow@sutherland.com

2/19/2009